

**REX METCALFE**  
 Claimant  
 VS.  
**MENU FOODS MIDWEST CORP.**  
 Respondent  
 AND  
**TIG-PREMIER INSURANCE CO.**  
 Insurance Carrier

Docket No. 264,523

Claimant argues the Board does not have jurisdiction on appeal from a preliminary hearing to address the issue of medical treatment and therefore the Administrative Law Judge's Order for Medical Treatment should be affirmed.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein, and the parties' briefs, the Board makes the following findings of fact and conclusions of law:

The Board concludes the issues raised by respondent do not give rise to a jurisdictional issue and the Board is not authorized to review the Order for Medical Treatment at this stage of the proceeding.

A preliminary hearing was held on July 19, 2002. Claimant sought additional medical treatment from Dr. Murati. The respondent admitted the case was compensable but argued claimant had reached maximum medical improvement and was not in need of additional medical treatment.

On July 24, 2002, the Administrative Law Judge entered his decision appointing Dr. Murati to provide claimant additional treatment.

Respondent had provided claimant's medical treatment and argues that even if the Administrative Law Judge granted claimant's request for a change of treating physician the respondent still had the choice of physician by providing claimant with a list of three physicians as provided in K.S.A. 44-510h. Accordingly, the respondent contends the Administrative Law Judge exceeded his jurisdiction.

Respondent argues the Administrative Law Judge violated the provisions of K.S.A. 44-510h(b)(1) which states in pertinent part as follows:

If the director finds, upon application of an injured employee, that the services of the health care provider furnished as provided in subsection (a) and rendered on behalf of the injured employee are not satisfactory, the director may authorize the appointment of some other health care provider. In any such case, the employer shall submit the names of three health care providers who, if possible given the availability of local health care providers, are not associated in practice together. The injured employee may select one from the list who shall be the authorized treating health care provider.

As above indicated, the Board has concluded the respondent's appeal does not raise a jurisdictional issue subject to review. Jurisdiction is described in Allen v. Craig, 1 Kan. App.2d 301, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977), as follows:

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly. (Citations omitted.)

The Workers Compensation administrative court has limited jurisdiction. Its subject matter jurisdiction is limited to cases involving accidental injury arising out of and in the course of employment. Whether claimant suffered accidental injury and whether the injury arose out of and in the course of employment are, therefore, designated in K.S.A. 44-534a as jurisdictional issues. Personal jurisdiction requires notice and timely written claim. Notice and written claim are designated as jurisdictional issues under K.S.A. 44-534a. Whether the Administrative Law Judge must, in a given set of circumstances, authorize treatment from a list of three physicians designated by respondent is not a question which goes to the jurisdiction of the Administrative Law Judge. The Administrative Law Judge may decide this question and has the jurisdiction to decide it wrongly.

**AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the appeal by the respondent should be dismissed because the Board is without jurisdiction to consider the issues raised and the Order of Administrative Law Judge Brad E. Avery dated July 24, 2002, should and does, remain in effect as originally entered.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of August 2002.

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BOARD MEMBER

c: Stanley R. Ausemus, Attorney for Claimant  
Kip A. Kubin, Attorney for Respondent  
Brad E. Avery, Administrative Law Judge  
Director, Division of Workers Compensation